

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROCKIME DAVIS and MYHANG LE,

Plaintiffs,

v.

THEO CHOCOLATE, INC., a Washington  
company,

Defendant.

CASE NO. 2:23-cv-01096-JHC

**STIPULATED PROTECTIVE  
ORDER**

The parties stipulate and jointly move the Court to enter the following Stipulated Protective Order under Local Rule 26(c)(2). In accordance with that Rule, the parties have attached a redline reflecting their proposed changes to the District's model stipulated protective order as Exhibit B to this filing.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal. The availability of protection pursuant to this agreement does not preclude a party from withholding information protected by any applicable privilege. Nothing in this agreement shall restrict in any way the right of a producing party to disclose or make use of its own documents or discovery material.

## 2. “CONFIDENTIAL MATERIAL”

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: all documents, materials, and information including and in relation to Defendant Theo Chocolate, Inc.’s (a) insurance agreements, claims files, underwriting files, reinsurance agreements, internal communications discussing the handling of insurance claims, coverage letters, and proprietary information pertaining to Plaintiffs’ allegations .

## 3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

## 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential  
 2 material must be stored and maintained by a receiving party at a location and in a secure manner  
 3 that ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 5 ordered by the court or permitted in writing by the designating party, a receiving party may  
 6 disclose any confidential material only to:

7 (a) the receiving party's counsel of record in this action, as well as employees  
 8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;  
 9

10 (b) the officers, directors, and employees (including in house counsel) of the  
 11 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 12 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
 13 designated;

14 (c) experts and consultants to whom disclosure is reasonably necessary for  
 15 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
 16 A);  
 17

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication  
 20 of confidential material, provided that counsel for the party retaining the copy or imaging service  
 21 instructs the service not to disclose any confidential material to third parties and to immediately  
 22 return all originals and copies of any confidential material;  
 23

24 (f) during their depositions, witnesses in the action to whom disclosure is  
 25 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
 26 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
2 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
3 under this agreement;

4 (g) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
7 referencing such material in court filings, the filing party shall confer with the designating party,  
8 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
9 remove the confidential designation, whether the document can be redacted, or whether a motion  
10 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
11 designating party must identify the basis for sealing the specific confidential information at issue,  
12 and the filing party shall include this basis in its motion to seal, along with any objection to  
13 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
14 followed and the standards that will be applied when a party seeks permission from the court to  
15 file material under seal. A party who seeks to maintain the confidentiality of its information must  
16 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion  
17 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in  
18 accordance with the strong presumption of public access to the Court's files.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
23 or non-party that designates information or items for protection under this agreement must take  
24 care to limit any such designation to specific material that qualifies under the appropriate  
25 standards. The designating party must designate for protection only those parts of material,  
26

1 documents, items, or oral or written communications that qualify, so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not  
3 swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
5 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
6 unnecessarily encumber or delay the case development process or to impose unnecessary  
7 expenses and burdens on other parties) expose the designating party to sanctions.

8  
9 If it comes to a designating party's attention that information or items that it designated  
10 for protection do not qualify for protection, the designating party must promptly notify all other  
11 parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
13 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or  
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
15 be clearly so designated before or when the material is disclosed or produced.

16  
17 (a) Information in documentary form: (e.g., paper or electronic documents  
18 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
20 contains confidential material. If only a portion or portions of the material on a page qualifies for  
21 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making  
22 appropriate markings in the margins).

23  
24 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
25 and any participating non-parties must identify on the record, during the deposition or other  
26 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other

1 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
2 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
3 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
4 confidential information at trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place  
6 on the exterior of the container or containers in which the information or item is stored the word  
7 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
8 the producing party, to the extent practicable, shall identify the protected portion(s).  
9

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the designating party’s  
12 right to secure protection under this agreement for such material. Upon timely correction of a  
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
14 in accordance with the provisions of this agreement.  
15

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
18 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
20 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
22 original designation is disclosed.  
23

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
25 regarding confidential designations without court involvement. Any motion regarding  
26 confidential designations or for a protective order must include a certification, in the motion or

1 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 2 conference with other affected parties in an effort to resolve the dispute without court action. The  
 3 certification must list the date, manner, and participants to the conference. A good faith effort to  
 4 confer requires a face-to-face meeting or a telephone conference.

5         6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
 6 intervention, the designating party may file and serve a motion to retain confidentiality under  
 7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 9 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
 10 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 11 maintain the material in question as confidential until the court rules on the challenge.  
 12

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 14 LITIGATION  
 15

16         If a party is served with a subpoena or a court order issued in other litigation that compels  
 17 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
 18 must:

19                 (a) promptly notify the designating party in writing and include a copy of the  
 20 subpoena or court order;

21                 (b) promptly notify in writing the party who caused the subpoena or order to  
 22 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 23 subject to this agreement. Such notification shall include a copy of this agreement; and  
 24

25                 (c) cooperate with respect to all reasonable procedures sought to be pursued  
 26 by the designating party whose confidential material may be affected.

1     8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2             If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
3 material to any person or in any circumstance not authorized under this agreement, the receiving  
4 party must immediately (a) notify in writing the designating party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
8 Agreement to Be Bound” that is attached hereto as Exhibit A.  
9

10     9.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
11 MATERIAL

12             When a producing party gives notice to receiving parties that certain inadvertently  
13 produced material is subject to a claim of privilege or other protection, the obligations of the  
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
15 provision is not intended to modify whatever procedure may be established in an e-discovery  
16 order or agreement that provides for production without prior privilege review. The parties agree  
17 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.  
18

19     10.    NON TERMINATION AND RETURN OF DOCUMENTS

20             Within 60 days after the termination of this action, including all appeals, each receiving  
21 party must return all confidential material to the producing party, including all copies, extracts  
22 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
23 destruction. The parties recognize that electronically stored information (“ESI”) results in copies  
24 made due to back up and archive protocols and no party can guaranty that every copy has been  
25 found and deleted. Therefore, the parties commit to use best reasonable efforts to delete  
26



1 confidential information instead of returning it. The parties will use best reasonable efforts to  
 2 delete confidential information from Concordance, Summation, Relativity or similar document  
 3 review/management programs and will use best reasonable efforts to destroy any hard copies  
 4 made of confidential information, as well as confidential ESI stored in other locations. Any copy  
 5 which survives inadvertently remains subject to the provisions of this agreement.

6 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 7 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
 9 work product, even if such materials contain confidential material. Such archival copy remains  
 10 subject to the provisions of this agreement.

11 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 12 designating party agrees otherwise in writing or a court orders otherwise.  
 13

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 **TOUSLEY BRAIN STEPHENS PLLC**

16 By: s/Kim D. Stephens, P.S.  
 17 Kim D. Stephens, P.S., WSBA #11984  
 18 By: s/Kaleigh N. Boyd  
 19 Kaleigh N. Boyd, WSBA #52684  
 20 kstephens@tousley.com  
 21 kboyd@tousley.com  
 22 1200 Fifth Avenue, Suite 1700  
 23 Seattle, Washington 98101  
 24 Telephone: 206.682.5600  
 25 Fax: 206.682.2992

26 **FITZGERALD JOSEPH LLP**

Jack Fitzgerald (*Pro Hac Vice*)  
 jack@fitzgeraldjoseph.com  
 Trevor M. Flynn (*Pro Hac Vice*)  
 trevor@fitzgeraldjoseph.com  
 2341 Jefferson Street, Suite 200  
 San Diego, California 92110  
 Phone: (619) 215-1741  
*Attorneys for Plaintiffs*

**GORDON REES SCULLY  
 MANSUKHANI, LLP**

By: s/Mark B. Tuvim  
 Mark B Tuvim, WSBA #31909  
 mtuvim@grsm.com  
 Gordon Rees Scully Mansukhani,  
 LLP  
 701 Fifth Avenue, Suite 1200  
 Seattle, WA 98104  
 mtuvim@grsm.com  
 Phone: (206) 695-5100  
 Fax: (206) 689-2822

*Attorneys for Defendant Theo  
 Chocolate, Inc.*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents, electronically stored information (ESI) or information, whether inadvertent or  
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal  
5 or state proceeding, constitute a waiver by the producing party of any privilege applicable to  
6 those documents, including the attorney-client privilege, attorney work-product protection, or  
7 any other privilege or protection recognized by law. This Order shall be interpreted to provide  
8 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)  
9 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to  
10 conduct a review of documents, ESI or information (including metadata) for relevance,  
11 responsiveness and/or segregation of privileged and/or protected information before production.  
12 Information produced in discovery that is protected as privileged or work product shall be  
13 immediately returned to the producing party.  
14

15 DATED: December 7, 2023

16  
17  
18 

19 John H. Chun  
20 United States District Court Judge  
21  
22  
23  
24  
25  
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Rockime Davis and MyHang Le v. Theo Chocolate, Inc.*, Case No. 2:23-cv-01096-JHC.  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_